

PTO/SB/97 (08-03)

Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

To: Examiner Steven L. Weinstein,

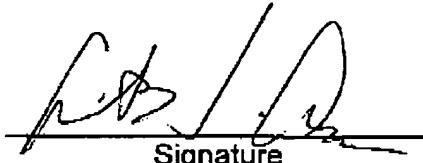
Art Unit: 1761Fax Number: 571-273-8300RECEIVED
CENTRAL FAX CENTERFrom: Grant D. Green, Reg. No. 31,259
440 San Domingo Way
Los Altos, CA 94022
Fax No.: 650-949-5240

JUL 20 2006

Total Pages: 19

Certificate of Transmission under 37 CFR 1.8**I hereby certify that this correspondence is being facsimile transmitted to the
United States Patent and Trademark Office****on July 20, 2006**

(Date)



Signature

Grant D. Green, Reg. No. 31,259

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

Documents Attached:Re. S/N 09/777,418, filed February 6, 2001, inventor Green,
Docket GDG01.US1

1. Fee Transmittal	(1 page)
2. Form PTO-2038	(1 page)
3. Petition for Extension of Time	(1 page)
4. 2 nd revised appeal brief	(15 pages)

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Docs No. 137544v1

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/17 (01-06)

Approved for use through 07/31/2006, OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL For FY 2006

 Applicant claims small entity status. Sec 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT

(\$ 1,080)

Complete If Known

Application Number	09/777,418
Filing Date	February 6, 2001
First Named Inventor	Grant D. Green
Examiner Name	Steven L. Weinstein
Art Unit	1761
Attorney Docket No.	GDG01.US1

RECEIVED
CENTRAL FAX CENTER

JUL 20 2006

METHOD OF PAYMENT (check all that apply)

 Check Credit Card Money Order Nonc Other (please identify): _____

 Deposit Account Deposit Account Number: _____ Deposit Account Name: _____

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

 Charge fee(s) indicated below Charge fee(s) indicated below, except for the filing fee
 Charge any additional fee(s) or underpayments of fee(s) Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity	Fee (\$)	Small Entity	Fee (\$)	Small Entity	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description

Each claim over 20 (including Reissues) Fee (\$): 50 Fee (\$): 25Each independent claim over 3 (including Reissues) Fee (\$): 200 Fee (\$): 100Multiple dependent claims Fee (\$): 360 Fee (\$): 180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	
				Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	=			

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
---------------	--------------	----------	---------------

- 3 or HP = x =

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

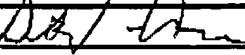
Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x		

4. OTHER FEE(S)

Non-English Specification: \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Extension of Time: _____ Fee Paid (\$): 1,080

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 31,259	Telephone 650-855-5311
Name (Print/Type)	GRANT D. GREEN		Date July 20, 2006

This collection of information is required by 37 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

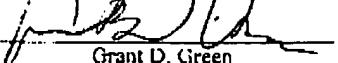
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

RECEIVED
CENTRAL FAX CENTER

I hereby certify that this correspondence is being transmitted by facsimile to the
Commissioner for Patents, 571-273-8300 on July 20, 2006.

7/20/06
Date


Grant D. Green

JUL 20 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

GRANT D. GREEN

Serial No.: 09/777,418

Group Art Unit: 1761

Filing Date: 6 February 2001

Examiner: Steven L. Weinstein

Title: METHOD FOR PACKAGING BAKING INGREDIENTS

SECOND REVISED APPELLANT'S BRIEF

Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

This Second Revised Appellant's Brief is filed in support of Applicant's Notice of Appeal, filed in the USPTO on September 21, 2004, in response to the Notification of Non-Compliant Appeal Brief dated February 21, 2006. A petition for a 5-month extension of time is attached, in addition to a form PTO-2038 authorizing the charges to Applicant's credit card.

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

I. REAL PARTY IN INTEREST

Applicant is the real party in interest.

RECEIVED
CENTRAL FAX CENTER
JUL 20 2006

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-3, 8-10, 19, and 21-24 are pending and rejected.

Claims 4-7, 11-18, and 20 are canceled.

Claims 1-3, 8-10, 19, and 21-24 are all appealed.

IV. STATUS OF AMENDMENTS

No amendments were submitted following the final rejection.

V. SUMMARY OF THE INVENTION

A. Introduction

The claimed invention relates to improved packaging for brown sugar.

In conventional, prior art packaging of brown sugar, a bulk weight is provided (e.g., 1 lb, 5 lbs, 500 g, 1 kg, etc.) in a single container for use by the end user or consumer. When cooking with brown sugar, the American consumer typically measures a quantity by *volume*: typical consumer recipes used in the United States specify quantities by volumetric measures, rather than by weight. However, brown sugar is sold in the US in a moist, aggregative form. To accurately measure a quantity of brown sugar, one packs the brown sugar firmly into a measuring device (e.g., a $\frac{1}{2}$ cup measure), as this is the conventional method of assuring a consistent measure (see, e.g., Woman's Day,¹ "Good Housekeeping Illustrated Cookbook" (1980 Hearst Books) p. 9,² and Better Homes and Gardens Complete Guide to Food and Cooking

¹ "When measuring, pack brown sugar firmly into container; it should retain the shape of the container when it is removed." (Woman's Day at p. 1784, middle column.)

² "Brown sugar: Pack the sugar lightly into the cup with the back of a spoon, then level off; it will hold its shape when inverted from the cup." Cited but not applied.

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

(1991, Meredith Corp.),³ cited by the Examiner). However, because brown sugar is aggregative, this transforms the brown sugar into a relatively solid lump, which must typically then be dispersed and mixed into other dry ingredients.

B. Claim 1

The subject matter of claim 1 provides a more convenient package for brown sugar, comprising individual pre-measured portions of brown sugar in an un-packed state, each pre-measured portion (volume) corresponding to a commonly-used recipe quantity of packed brown sugar. (Specification at p. 3, lines 18-20; p. 4, lines 6-16.)

For example, a package of the invention may comprise a box containing a plurality of individual plastic bags, each containing an amount of "unpacked" brown sugar corresponding to 1 cup, 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, and 1/4 cup of "packed" brown sugar. (Specification at p. 2, lines 25-34.) Thus, the consumer may then use brown sugar without packing the brown sugar into a measuring container, or in fact measuring the brown sugar further at all.

The packaging method of the invention has a further advantage in that the brown sugar remaining unused in the package will remain sealed in its pre-measured portions, without exposure to air. This helps to keep the brown sugar from drying out and forming hard lumps. (Specification at p. 3, lines 32-34.)

Note that "brown sugar" is defined in the specification (p. 2, lines 33-34) to exclude sugar that has been granulated or otherwise treated to avoid caking.

Claims 8, 19, 22, and 23 are argued together with Claim 1.

C. Claim 2

Dependent claim 2 is limited to embodiments of the invention wherein the pre-measured quantity of brown sugar corresponds to a packed volume of greater than 1/8 cup (Specification at p. 2, lines 23-24).

D. Claim 3

Dependent claim 3 is limited to embodiments in which the pre-measured quantity of brown sugar corresponds to a packed volume of 1 cup, 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, and 1/8 cup (Specification at p. 2, lines 25-34). Claim 10 is argued together with claim 3.

³ "Sugar: Granulated or powdered sugar should be spooned into a dry measuring cup and leveled off. Brown sugar, on the other hand, is pressed firmly into a dry measure so it holds the shape of the cup when it is turned out (see Photo 3)." Cited but not applied.

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

E. Claim 9

Dependent claim 9 is limited to embodiments comprising a plurality of pre-measured portions (limitation from claim 8; Specification at p. 3, lines 18-28), further where the plurality of portions comprises a plurality of different sizes, for example wherein the portions included correspond to 1 cup, 2/3 cup, 1/2 cup, 1/3 cup, and 1/4 cup packed volumes (Specification at p. 3, lines 20-21). For example, an embodiment within the scope of this claim can comprise a box (or other suitable container) containing a plurality of smaller plastic bags, each labeled with the amount of packed brown sugar to which its contents correspond, and containing said quantity of brown sugar in an unpacked state.

F. Claim 19

Independent claim 19 covers an article comprising a plurality of bags, wherein each bag contains a pre-measured portion of brown sugar that corresponds to a quantity of brown sugar commonly used in cooking recipes (Specification at p. 3, lines 25-34).

G. Claim 21

Dependent claim 21 limits the article of claim 19 to one containing pre-measured quantities of brown sugar of selected sizes (3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, 1/8 cup) (Specification at p. 3, lines 28-32).

H. Claim 24

Claim 24 further limits the article of claim 19 to one in which the bags or packets are joined end-to-end, as depicted in Fig. 2 (see also Specification at p. 3, line 35 to p. 4, line 5).

VI. GROUNDS OF REJECTION TO BE REVIEWED

Are claims 1-3, 8-10, 19, and 21-24 obvious under §103(a) over *Institution Distribution* (1991) 27(6):158; and *Star Tribune* (11/22/89, p. 4T); in view of *Woman's Day Encyclopedia of Cookery* (1966) 11:1784; "Family Circle Illustrated Library of Cooking" (1972) pp. 479-80; *Advertising Age* (8/21/78) p. 65; *Saulsbury* (US 4,335,609); and *Slagg* (US 4,810,239); further in view of *Pichardo* (US 2,745,751); *Forbes* (6/2/97) p. 196; and *Baltimore Morning Sun* (8/4/97) p. 53?

Atty Dkt No. GDG01.US1
 USSN 09/777,418
 PATENT

Claim 24 was subject to a separate rejection in the Office Action of 5/22/03 (see p. 5)⁴; however, this rejection was not repeated or referenced in the Final Action dated March 22, 2004. Applicant assumes that this rejection has not been maintained, and believes in any event that claim 24 is non-obvious over the cited art for the same reasons as set forth below for claim 1.

VII. ARGUMENT

Obviousness under §103(a) is determined using the four-part test set forth in *Graham v. John Deere*:

“In determining obviousness, we employ the four-part test set forth in *Graham v. John Deere* Co., 383 U.S. 1 [148 USPQ 459] (1966). This test requires us to examine (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) the objective evidence of nonobviousness. *Id.* at 17-18; *see also* 35 U.S.C. §103 (2000).” (*Iron Grip Barbell Co. v. USA Sports Inc.* (CAFC 2004) 73 USPQ2d 1225.)

A. Scope and Content of the Prior Art

Institutional Distribution (1991) 27(6):158 is cited by the Examiner for its teaching that turbinado sugar is sold in single-service two-teaspoon packets for table use (Office Action 5/22/03 at pp. 2-3). *Institutional Distribution* also disclosed that turbinado sugar is “a crystalline sugar with an off-white to tan color and a distinctive flavor.” *Institutional Distribution* further disclosed that brown sugar is refined sugar to which a “molasses-type syrup has been added to provide flavor and color.”

Star Tribune (11/22/89, p. 4T) is cited by the Examiner for its teaching of brown sugar sold in ½ cup (3.5 oz) foil packets under the name “Soft ‘n Sweet” (Office Action 5/22/03 at p. 3). The reference did not disclose whether the brown sugar was packed into the foil, or filled loosely, but stated that the manufacturer “has devised a method of adding molasses to brown sugar to keep it soft. In fact, it’s guaranteed for one year not to harden in the package.”

Woman’s Day Encyclopedia of Cookery (1966) 11:1784 is cited by the Examiner as disclosing “further evidence of packaging brownulated sugar” and that information is available

⁴ Claim 24 was rejected as obvious under §103(a) over the references applied in the rejection of all other claims, further in view of *Modern Packaging*; Tremaine, GB24,151; Salsisberg, AU 113,301; Knoop et al., US 2,791,324; and Cozzie, US 5,664,670. Each reference disclosed various forms of packaging having multiple containers. None disclosed any packaging of brown sugar.

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

for substituting brownulated sugar for brown sugar (Office Action 5/22/03 at p. 3). *Woman's Day* disclosed that "brownulated sugar" pours freely.

"Family Circle Illustrated Library of Cooking" (1972) pp. 479-80 is cited by the Examiner as "providing further evidence that it was known in the art to provide a weight/volume relationship for firmly packed, brown sugar..." (Office Action 5/22/03 at p. 3). Family Circle in fact disclosed that "One pound light or dark brown sugar, firmly packed, measures 2½ to 2½ cups", and that brown sugar is sold in 1-pound cartons and 2-pound transparent bags. Family Circle further disclosed that brownulated sugar pours easily, does not need to be packed for measuring, and is sold in 1 lb-4 oz cartons.

Advertising Age (8/21/78) p. 65 is cited by the Examiner as disclosing that "the relationship between brownulated and brown sugar was also known." (Office Action 5/22/03 at p. 4.) The text of the reference states, in its entirety:

"Amstar Corp. has reformulated the brownulated granulated brown sugar. The new formula allows for a 1-to-1 substitution with brown sugar, compared with the earlier 1½-to-1 replacement ratio."

Saulsbury (US 4,335,609) and Slagg (US 4,810,239) were cited by the Examiner as "further evidence that it was known that brown sugar created problems in recipes due to its property of variably clumping." (Office Action 5/22/03 at p. 4.) Saulsbury disclosed an improved measuring cup, having an upper disk for compacting and leveling ingredients such as brown sugar. Slagg disclosed a scale for weighing ingredients, and capable of displaying the volumetric equivalent.

Forbes (6/2/97) p. 196 is cited by the Examiner as further evidence of brown sugar in packets (Office Action 5/22/03 at p. 4). The reference actually states: "Patricia Row, who runs a value equity portfolio at \$1.6 billion (assets) Kennedy Capital Management, thinks Savannah's new packaging and retail items flavored sugars for iced tea and brown sugar in packets will help the company expand its 20% share of the sugar market." The reference failed to state what quantity of sugar is enclosed in the packets.

Pichardo (US 2,745,751) is cited by the Examiner "as further evidence of providing products such as sugar, albeit, not brown sugar, in containers wherein the sugar has been

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

predetermined to assume certain measurements; specifically volume measurements (e.g., 1 and $\frac{1}{2}$ teaspoons)." (Office Action 5/22/03 at p. 4.)

Baltimore Morning Sun (8/4/97) p. 53 is cited by the Examiner "to disclose[] that even brownulated sugar clumps". The reference (an obituary) stated that Mr. Moore "is credited with helping pioneer the development of 'brownulated' sugar, which doesn't clump as much as does normal brown sugar." (Office Action 5/22/03 at p. 4.)

B. The Level of Ordinary Skill in the Art

Applicant is a layperson with regard to the field of consumer product packaging.

C. The Differences Between the Claimed Invention and the Prior Art

The claimed invention is admittedly very simple. However, simplicity is not synonymous with obviousness under §103(a). As stated by the Court of Appeal for the Federal Circuit in *In re Kotzab* (CA FC 2000) 55 USPQ2d 1313:

"A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. See *Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher." *Id.* (quoting *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983)).

Most if not all inventions arise from a combination of old elements. See *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. See *id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. See *id.* Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. See *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Even when obviousness is based on a prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference. See *B.F. Goodrich Co. v. Aircraft Breaking Sys. Corp.*, 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996)." (*In re Kotzab* (CA FC 2000) 55 USPQ2d 1313 at 1316-17, emphasis added.)

The claimed invention differs from the cited art as set forth below:

Atty Dkt No. GDG01.US1

USSN 09/777,418

PATENT

Institutional Distribution disclosed the packaging of turbinado sugar in single-service two-teaspoon (2 tsp) packets for table use. However, "brown sugar" as defined in the Specification excludes any sugar that has been granulated or treated to avoid caking; turbinado sugar apparently pours freely. Thus, Applicant submits that the turbinado sugar disclosed in *Institutional Distribution* is not "brown sugar" within the meaning of claims 1 and 19, as defined in the Specification at p. 2, lines 31-34. Claims 2, 3, 10, and 21 further limit the invention to quantities of brown sugar equivalent to at least 1/8 cup of packed brown sugar, which is larger than the 2 tsp packets disclosed in *Institutional Distribution*.⁵ Claim 9 differs from *Institutional Distribution* in that claim 9 requires a plurality of different sized portions, whereas *Institutional Distribution* disclosed only 2 tsp packets. Claim 24 further differs from *Institutional Distribution* in that *Institutional Distribution* does not disclose a plurality of bags joined end to end, as Applicant illustrated in Fig. 2 of the application.

Claims 1 and 19, and their dependent claims, do not read on *Star Tribune* because the reference does not disclose if the cited sugar is sold in foil packets that contain 1/2 cup of packed brown sugar, or 1/2 cup of unpacked brown sugar, or the equivalent of 1/2 cup of packed brown sugar. If the reference sugar is packaged to contain 1/2 cup of unpacked brown sugar, rather than the equivalent of 1/2 cup of packed brown sugar, it does not fall within the claims. As the reference does not state that the foil packets contain the equivalent of 1/2 cup (or any other amount) of packed sugar, it fails to fall within the claims. Although the reference sugar is allegedly packaged in such a way that it remains soft, the consumer is still required to measure out a quantity of sugar and thus does not obtain the benefit of the claimed invention. Claim 9 is further distinguished from *Star Tribune* in that claim 9 requires a plurality of different sized portions, whereas *Star Tribune* disclosed only at most 1/2 cup portions. Claim 24 further differs from *Star Tribune* in that *Star Tribune* does not disclose a plurality of bags joined end to end.

Woman's Day Encyclopedia of Cookery was cited for its teaching of "brownulated sugar", which pours freely and is thus outside the scope of "brown sugar" as claimed herein. Thus, *Woman's Day* fails to disclose a pre-measured portion of brown sugar as defined in the Specification, and claims 1 and 19, and their dependent claims fail to read on the reference.

⁵ 1/8 cup is equal to 2 Tbl, which is equal to 6 tsp (1 Tbl = 3 tsp).

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

“Family Circle Illustrated Library of Cooking” disclosed sugar sold by weight, regardless of the volume of sugar (packed or not) that corresponds. The statement in the reference that “One pound light or dark brown sugar, firmly packed, measures 2½ to 2½ cups” shows the lack of packaging by volume. Thus, claims 1 and 19, and the claims dependent therefrom, do not read on Family Circle because it does not disclose the packaging of brown sugar in a volume equivalent to a pre-measured packed volume. Claims 3, 10 and 21 further differ from Family Circle in that they specify that the pre-measured quantity be selected from the group consisting of 1 cup, 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, and 1/8 cup, none of which are disclosed in Family Circle as brown sugar package sizes. Claim 9 further differs from Family Circle in that it requires a plurality of different sized portions, which is not disclosed in the reference. Claim 24 further differs from Family Circle in that it requires a plurality of bags joined end to end, which is not disclosed in the reference.

All pending claims fail to read on *Advertising Age*, because it disclosed only the change in a substitution ratio, from 1.5-to-1 to 1-to-1, between “brownulated” sugar and brown sugar. Because “brownulated” sugar is apparently free-flowing, it is outside the scope of the invention. It is further irrelevant because recipes do not include instructions for quantities of brownulated sugar.

Saulsbury (US 4,335,609) and Slagg (US 4,810,239) disclose, respectively, a measuring cup improvement and a gravimetric kitchen scale capable of calculating the equivalent volume of selected ingredients. Neither disclosed an article of manufacture comprising a quantity of loose brown sugar equivalent to a quantity of packed brown sugar. Thus, all of the pending claims fail to read on Saulsbury and Slagg.

Forbes disclosed little more than the idea that brown sugar may be placed in packets. As *Forbes* failed to disclose anything regarding the quantity of sugar within the packet, or whether it was packed or loose, *Forbes* fails to teach anything relevant to the pending claims.

Pichardo (US 2,745,751) disclosed beverage kits containing (apparently white) sugar and powdered creamer, and powdered coffee, wherein two compartments of different sizes were provided so that one could add ½ tsp, 1 tsp, or 1½ tsp of sugar. However, Pichardo failed to disclose the packaging of brown sugar. Brown sugar and white sugar are clearly not equivalent in terms of their ease of packaging and use, as evidenced by Saulsbury, Slagg, and the development

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

of "brownulated" sugar. Although Pichardo disclosed a step toward convenience, it addressed the convenience of the coffee drinker, rather than the cook in the kitchen who is wrestling with brown sugar. The problems and solutions are distinct, as white sugar does not need to be packed for measuring. Thus, Pichardo failed to suggest or teach the claimed invention.

Baltimore Morning Sun was cited as teaching that "even brownulated sugar clumps". This, however, is contradicted by the Examiner's other cited references (*Woman's Day* and *Family Circle*), which disclose that brownulated sugar "pours freely." However, regardless of whether brownulated sugar may clump or not, one apparently does not have to pack it in order to measure it (see *Family Circle*). *Baltimore Morning Sun* failed to disclose anything regarding the packaging of brown sugar.

In summary, the only sugar packaging disclosed in the cited art apart from *Star Tribune* consists of (a) individual "table service" packets (about 2 tsp), (b) 1 lb bags or cartons, and (c) 2 lb bags. *Star Tribune* disclosed foil packets of brown sugar containing $\frac{1}{2}$ cup, but did not disclose whether this quantity was an amount of loose brown sugar corresponding to $\frac{1}{2}$ cup of packed brown sugar, or whether it was simply $\frac{1}{2}$ cup of loose brown sugar. In any event, it failed to suggest or teach packaging brown sugar loosely, but in a quantity that corresponds to a convenient amount of packed brown sugar.

The primary advantage of the claimed invention is that it avoids the annoyance of packing brown sugar in order to measure it, followed by "unpacking" it to disperse it into dry ingredients. This annoyance simply does not exist in the case of freely-flowing ingredients such as conventional white sugar or (apparently) brownulated sugar. Regular granulated sugar can be simply poured into a measuring cup, and dumped into a bowl to be easily mixed with any other ingredient: thus, there is no (or at most a very minor) advantage to pre-measuring granulated sugar. Packed brown sugar, in contrast, clings together in lumps and resists even dispersion. Thus, the cited art that discloses packaging of granulated (including "brownulated" sugar) fails to suggest either the problem or the solution achieved by the claimed invention.

The Examiner's rejection appears to be summed up in the statement: "It is also pointed out that any loosely packaged brown sugar would be equivalent to *some* measured quantity of firmly packed brown sugar." (Office Action 5/22/03 at p. 3, beginning of lower paragraph, emphasis added.) This, however, misses the point of the invention. The claims claim a "pre-

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

“measured portion” of brown sugar equivalent to an amount of packed brown sugar commonly used in consumer recipes (Specification at p. 3, lines 19-20). This is synonymous with a useful volume: see, e.g., “common measure” and “recipe measure” as defined in the Specification at p. 2, lines 20-24. Further, a “pre-measured portion” is clearly not a random or irregular quantity, as such would be the antithesis of a *measured* portion. Further, the Examiner’s position clearly does not apply to claims 3, 10, and 21, which specify particular volumes of packed brown sugar. Applicant further points out that 1 lb and 2 lb containers disclosed in the art are not convenient measures for consumers (as 1 lb of brown sugar corresponds to between 2½ and 2½ cups, according to *Family Circle*), nor would it be practical or convenient to tear open 192 packets, each containing 2 tsp of brown sugar, in order to measure out ½ cup.

Star Tribune is the only cited reference that disclosed brown sugar packaged in something other than a 1 lb (or greater) bag, or 2 tsp packets. However, *Star Tribune* failed to disclose the state of the brown sugar contained in the package, i.e., whether it was packed or loose. Nothing in *Star Tribune* taught or suggested providing multiple packets in a variety of sizes, nor did it clearly disclose packing a quantity of loose brown sugar equivalent to a useful measured amount of packed brown sugar.

Applicant submits that the cited references fail to disclose or suggest the claimed invention. None of the references, alone or in combination, suggest that brown sugar can or should be packaged loosely in individual portions that correspond to useful amounts of packed brown sugar. Further, none of the cited references disclose or suggest providing brown sugar in a plurality of individual portions, or particularly in a plurality of useful portions of different sizes. Here, as in *In re Kotzab*, one must be careful not to find the claimed invention obvious merely because it is so simple.

Further, the claimed invention exhibits a surprising result in view of the cited art: although the art apparently recognizes the inconvenience of handling brown sugar (as evidenced by the development of “brownulated” sugar), nothing in the art suggests that the manufacturer can pre-measure conventional brown sugar and provide it in pre-measured portions.

D. Objective Evidence of Nonobviousness

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

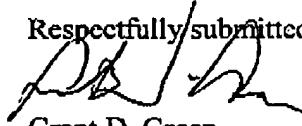
Ingredients used in cooking in the United States are generally not sold in pre-measured quantities that correspond to useful amounts (e.g., in an amount that would be required for single recipe). Applicant can think of only butter (which is available in 1/4 lb, 1/2 cup sticks) and dairy products such as cream (available in 1/2 pint, pint, and quart containers) as possible counter-examples. Most other ingredients are sold in bulk (e.g., in 1 lb or 5 lb bags), from which the desired quantity is then measured. For most ingredients, this is simple and effective. However, as discussed above, brown sugar is particularly problematic due to its physical properties.

The development of "brownulated" sugar at least as early as 1966 (cited in *Woman's Day* above) and its reformulation in 1978 (*Advertising Age*, cited above) demonstrates the long held unmet need to find a solution for dealing with the problems of handling brown sugar. That solution, however, does not appear to have been widely adopted, judging from the range of products available on supermarket shelves. Brownulated sugar, because it is not as hygroscopic as conventional brown sugar, imparts a different texture to baked goods.

The moist, hygroscopic properties of conventional brown sugar are the cause of both its advantages and its disadvantages. Its baking advantages over brownulated sugar (and white sugar) are that it results in soft and chewy cookies (as well as lighter and moister cakes and other desserts), in addition to its agreeable molasses taste. However, that very hygroscopicity also causes the physical characteristics that make brown sugar awkward to deal with. The measurement problem remains, and is fully overcome only by the claimed invention.

Applicant respectfully submits that the Examiner's rejection(s) are in error, and that the claimed invention is patentable over the cited prior art. Applicant respectfully requests reversal of the rejections, and allowance of the pending claims.

Respectfully submitted,



Grant D. Green
Reg. No. 31,259

Date: July 19, 2006
440 San Domingo Way
Los Altos, CA 94022
650-855-5311 (voice)
650-949-5240 (fax)
gdgreen@sbcglobal.net

Atty Dkt No. GDG01.US1

USSN 09/777,418

PATENT

RECEIVED
CENTRAL FAX CENTER

IX. APPENDIX - CLAIM LISTING

JUL 20 2006

1. (Previously presented) An article of manufacture, comprising: a pre-measured portion of brown sugar, enclosed in a suitable container, wherein said brown sugar comprises loosely-packed brown sugar, and said pre-measured portion is an amount equivalent to a pre-measured quantity of firmly-packed brown sugar.
2. (Previously presented) The article of claim 1, wherein said pre-measured quantity of firmly-packed brown sugar is larger than 1/8 cup.
3. (Previously presented) The article of claim 1, wherein said pre-measured quantity of firmly-packed brown sugar is selected from the group consisting of 1 cup, 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, and 1/8 cup.
- 4-7. (Cancelled)
8. (Original) The article of claim 1, wherein said article comprises a plurality of pre-measured portions, each enclosed in an individual container.
9. (Original) The article of claim 8, wherein said plurality of pre-measured portions comprises a plurality of different sized portions.

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

10. (Previously presented) The article of claim 9, wherein at least one pre-measured quantity of firmly-packed brown sugar size is selected from the group consisting of 1 cup, 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, and 1/8 cup.

11-18. (Cancelled)

19. (Previously presented) An article of manufacture, comprising a plurality of bags, each bag comprising a pre-measured portion of brown sugar, wherein said brown sugar comprises loosely-packed brown sugar, and said pre-measured portion is an amount equivalent to a pre-measured quantity of firmly-packed brown sugar.

20. (Cancelled)

21. (Previously presented) The article of claim 19, wherein said pre-measured quantity of firmly-packed brown sugar is selected from the group consisting of 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, and 1/8 cup.

22. (Original) The article of claim 19, wherein said plurality of bags comprises at least four bags.

23. (Original) The article of claim 19, wherein each bag contains an identical pre-measured portion.

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

24. (Original) The article of claim 19, wherein said plurality of bags are joined end to end in a chain.

IX. EVIDENCE APPENDIX

Not applicable

X. RELATED PROCEEDINGS APPENDIX

Not applicable.